

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1670 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
- =====

THE EDWARD WASHING CO.

Versus

BAI AMMABEN SULEMAN

Appearance:

MR UTPAL M.PANCHAL FOR VYAS ASSOCIATES for Petitioner
MR RV DAGLI FOR MR PM THAKKAR for Respondent No. 1
..... for Respondent No. 1/1-1/6

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/09/2002

ORAL JUDGEMENT

1. This Revision Application preferred under Section

29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act') arises from the judgment and order dated 15th September, 1983 passed by the learned Extra Assistant Judge, Rajkot in Civil Appeal No.422/1980. The petitioner before this Court is the appellant - defendant.

2. The respondent herein (hereinafter referred to as 'the plaintiff') is the owner of a residential building named 'Arif Manzil' situated at Rajkot. Part of the ground floor of the said building (hereinafter referred to as 'the suit premises') was given on rent of Rs.75=00 per month to the defendant - petitioner Company for residence of its Manager. It appears that the defendant was in arrears of rent since the month of May, 1975 till November, 1977. The plaintiff gave notice on 16th December, 1977 raising a demand of Rs.2,325=00 being the arrears of rent and terminating the tenancy. The said notice was not responded to by the defendant. The plaintiff, therefore, instituted Rent Suit No.949/1979 (old Rent Suit No.1390/1978) in the Court of Small Causes, Rajkot.

3. The suit was contested by the defendant by filing written statement Ex.12. In the said written statement the defendant raised dispute as regards the standard rent of the suit premises. The trial Court, under its judgment and order dated 28th October, 1980, was pleased to hold that defendant was the tenant of the suit premises on monthly rent and was in arrears of rent for more than six months. That in answer to the suit notice the defendant had not raised dispute as to the standard rent within one month from the date of the receipt of the notice and that the defendant neglected to make payment of arrears of rent until the expiration of the period of one month from the date of the receipt of the suit notice. The learned trial Judge was, therefore, of the opinion that the case was squarely covered by Section 12(3)(a) of the Rent Act. However, the learned trial Judge also examined whether the defendant was entitled to protection as envisaged under Section 12(3)(b) of the Rent Act. Even then the learned Judge has found that even after the date of the suit the defendant did not deposit the arrears of rent by the first day of hearing of the suit i.e. on the date the issues were framed. A part of the arrears of rent i.e. a sum of Rs.1,950=00 was deposited in the Court on 23rd October, 1980 i.e. at the fag end of the trial; a few days before the date of the decree. Thus, the defendant not being entitled to protection under Section 12(3)(b) of the Rent Act either,

the learned trial Judge passed decree for eviction and of arrears of rent and the mesne profits. Feeling aggrieved, the defendant preferred Civil Appeal No.422/1980 in the District Court, Rajkot. The said appeal was dismissed by the learned Assistant Judge, Rajkot on 15th September, 1983. Feeling aggrieved, the defendant has preferred the present Revision Application.

4. Mr.Panchal has submitted that both the Courts below have erred in passing a decree for possession as envisaged under Section 12(3)(a) of the Rent Act. He has submitted that the defendant did raise dispute as to the standard rent by taking necessary plea in the written statement. The petitioner, therefore, was entitled to protection under Section 12(3)(b) of the Rent Act and no decree for eviction could have been passed in such circumstances. In support of his submission Mr.Panchal has relied upon the judgments of this Court in the matters of NARANBHAI NATHABHAI KOLI V/S. MODHIA PANALAL MAGANLAL [23(2) G.L.R. 98] and of RUPABEN WD/O KATHTHU DHANJI & ANR. V/S. BABUBHAI DEOJIBHAI [24(1) G.L.R. 263].

5. In the case of Naranbhai Nathabhai Koli (supra), the learned Judge held that protection under Section 12(3)(b) of the Rent Act would still be available to a tenant in default of payment of rent if he raises a dispute as to the standard rent by raising necessary plea in the written statement. The Court has further held that in such an eventuality the tenant would be liable to pay arrears of rent and the standard rent only when it is known i.e. only after the Court fixes the standard rent. Similar is the view expressed by the learned Judge in the matter of Rupaben Wd/o Kaththu Dhanji (supra).

6. Mr.Panchal has, therefore, submitted that in the present case the defendant having raised the dispute as regards the standard rent in his written statement the case was taken out of purview of Section 12(3)(a) of the Rent Act. As far as the protection under Section 12(3)(b) of the Rent Act is concerned, the defendant would be entitled to the same inspite of his not depositing the arrears of rent on the first day of hearing or even thereafter and his not paying/depositing the rent regularly in the Court pending the trial, because until the date of decree the standard rent was not determined and the defendant was not aware what the standard rent of the suit premises was. He has, therefore, prayed that the decree for possession passed by both the Courts below be quashed and set aside.

7. I see no substance in the submissions made by Mr.Panchal. As regards the judgment in the matter of Naranbhai Nathabhai Koli (supra), I have, in the matter of Jayantilal Jagjivandas Dubal v/s. Dhirajlal Bapalal Gandhi [Civil Revision Application No.90/1984 decided on 26th August, 2002], held that the same does not lay down a good law. The Hon'ble Supreme Court as far back in the matter of Shah Dhansukhlal Chhaganlal v/s. Dalichand Virchand Shroff (Decd) by his Legal Representatives [A.I.R. 1968 S.C. 1109] and this Court as far back in the matter of Shah Ambalal Chhotalal v/s. Shah Babaldas Dahyabhai [3 G.L.R. 625] have held that the dispute as regards the standard rent, so as to attract the protection under Section 12(3)(b) of the Rent Act, should be raised either before the notice as envisaged under Section 12(2) of the Rent Act or within one month from the date of receipt of such notice either by replying to the said notice and raising a dispute in such reply or by making an application under Section 11(3) of the Rent Act. Any dispute as regards the standard rent raised after the expiry of the period of one month from the date of the notice under Section 12(2) of the Rent Act or raised in answer to the suit by taking necessary plea in the written statement, is of no consequence. This view has been followed consistently by this Court until as late as in the case of Rafikbhai Husainbhai Chauhan v/s. Soni Ghanshyambhai Popatlal [2001(2) G.L.H. UJ 3]. The learned Judge, in the matters of Naranbhai Nathabhai Koli (supra) and Rupaben Wd/o Kaththu Dhanji (supra) has not considered either of the above referred judgments of the Hon'ble Supreme Court or of this Court. The said judgments in so far as they lay down that a valid dispute as regards the standard rent can be raised by raising necessary plea in the written statement so as to attract the protection of Section 12(3)(b) of the Rent Act are per incurium.

8. Coming to the facts of the present case, I am of the view that both the Courts below have rightly held that the case squarely falls within the four corners of Section 12(3)(a) of the Rent Act. Indisputably, the rent was payable by month, on the date of the suit notice the defendant was in arrears of rent for more than six months; the tenant neglected to make payment of arrears of rent within one month from the date of receipt of the notice under sub section 2 of Section 12 of the Rent Act and that no dispute as regards the standard rent had been raised by the tenant within such one month. Both the Courts below, therefore, have rightly passed decree for possession under Section 12(3)(a) of the Rent Act.

9. Even if it were held that the defendant was entitled to protection under Section 12(3)(b) of the Rent Act, such protection would be available only in case the defendant complied with the conditions mentioned therein i.e. the defendant paid the entire arrears of rent on the first day of hearing of the suit and continued to pay the standard rent regularly thereafter. The defendant has forfeited this right of protection by not complying with the conditions mentioned in the said Section 12(3)(b). One of the conditions precedent is that the tenant should continue to pay or tender in the Court such rent and permitted increases till the suit is finally decided. It is well established that the appeal, if any, is continuation of the suit and such regular payment shall be made even pending the appeal. Even if it were held that until the date of the decree the standard rent was not known to the defendant, atleast from the date of the decree the defendant was expected to make regular payment of the rent as determined by the Court. There too the defendant has failed. Even pending the appeal the defendant has hardly made any payment towards the rent falling due from month-to-month. I am also informed at the bar that even pending this Revision Application the defendant has failed to deposit the rent regularly. Since the month of April, 2001 no rent has been tendered.

10. In the aforesaid circumstances, no indulgence is warranted. The Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

(Ms. R.M. Doshit, J.)

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